

Application No.: 10/668,883

Docket No.: 61843(51035)

REMARKS

Claims 1-16 are pending in the application. Claims 1-5 and 13-16 are cancelled herewith as withdrawn subject matter. Claims 6-12 are under examination. Claims 17-23 are added. Support for claims 17-23 appear throughout the specification and claims as originally filed. Applicants request entry and consideration of the request, amendments and response herein.

Amendment of any claim herein is not to be construed as acquiescence to any of the rejections/objections set forth in the instant Office Action, and was done to expedite prosecution of the application. Applicants make these amendments without prejudice to pursuing the original subject matter of this application in a later filed application claiming benefit of the instant application, including without prejudice to any determination of equivalents of the claimed subject matter. Support for these amendments appears throughout the specification and claims as filed. No new matter is introduced by these amendments.

Rejection under 35 U.S.C. 112, second paragraph

Claims 7-9 are rejected as failing to comply with the written description requirement. Applicants traverse.

Claim 7 is rejected for lack of antecedent basis for the phrase "the hops acids". As suggested by the Examiner, Applicants have amended claim 7 to recite "hops acid". Support for this amendment appears throughout the specification and claims as filed.

Claim 8 is amended to correct a typographical error.

Claim 12 is stated as having insufficient antecedent basis for the phrase "the hop acid capable of increasing the level of propionate." Applicants have amended claim 12 to reflect proper antecedent basis.

In view of these amendments, Applicants respectfully request withdrawal of these rejections.

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Rejection under 35 U.S.C. 103(a)

Claims 1-12 are rejected as obvious over Krishna (U) in view of Newmark (A), Muller (N) and Haas (C), and in view of Hunter (B) and Johnson (O) (references as designated in PTO-892 attached to the Action). Applicants traverse. The assertion in the Action of the teaching of Krishna is a misinterpretation of the Krishna subject matter.

To establish a *prima facie* case, three requirements must be met: (a) there must be a suggestion or motivation to modify the reference or combine the teachings; (b) there must be a reasonable expectation of success; and (c) the prior art references must teach or suggest all claim limitations. MPEP 2143. Applicants submit that at least one of these elements is not met and a *prima facie* case of obviousness is not established.

It is stated in the Action (at page 5) that "... Krishna dose not expressly teach that the spent hops used in the experimental studies comprised the instantly claimed ingredients of hops acids." This is true. The argument in the Action then goes on to cite Newmark, Muller and Haas to evidence that spent hops inherently has hops acids. It is this rationale that is flawed. Newmark, Muller, Haas and Johnson all describe extracts of hops and methods (e.g., extraction using CO₂, ethanol, CH₂Cl₂, etc.) of obtaining hops extracts. And it is the resulting extracts that contain the hops acids, not the spent hops. Thus, the spent hops administered by Krishna, in fact, contained little if any hops acids because the hops acids were removed from the spent hops by the extraction processing.

Furthermore, Hunter relates to block co-polymers (e.g., octablock co-polymers) and no evidence is cited in the Action relating to any description of hops or hops products in Hunter. Applicants also submit that Hunter (relating to synthetic block co-polymers) and Applicants' subject matter (hops acids) are of sufficiently different composition that one of ordinary skill in the art would not combine them or be motivated by Hunter to arrive at Applicants' hops acids subject matter.

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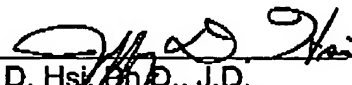
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Krishna provides no description or suggestion of Applicants' claimed methods of using hops acids, either generally, or specifically for improved processes for increasing food and energy uptake. Thus, Krishna in combination with Newmark, Muller, Haas, Hunter or Johnson at least fails to provide a suggestion or motivation to modify Krishna to arrive at Applicants' methods, fails to teach or suggest all claim limitations (e.g., use of hops acids) and therefore fails to meet criteria (a) and (c) above. A *prima facie* case of obviousness is thus not established. As such, Applicants respectfully request that this rejection be withdrawn.

In view of the above amendment, Applicants believe the pending application is in condition for allowance. Should any of the claims not be found to be in condition for allowance, the Examiner is requested to call Applicants' undersigned representative to discuss the application. Applicants thank the Examiner in advance for this courtesy. The Director is hereby authorized to charge or credit any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 61843(51035).

Dated: March 21, 2005

Respectfully submitted,

By 
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